

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0236
Sales and Use Tax
For the Periods 2000 & 2001 and 2002

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ISSUE

I. Sales Tax—Requirement to calculate and collect sales tax on retail transactions

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-4-1.

Taxpayer protests the assessment of sales tax due.

STATEMENT OF FACTS

Taxpayer's principal business activity is the manufacturing of various signs. These signs include aluminum signs, illuminated signs, single-faced and double-faced wooden signs, coroplast signs, sandwich signs, and magnetic signs. The signs are sold over the counter and in some instances the signs are installed by Taxpayer. Taxpayer's sales also include vinyl letters & numbers, lettering of customers' vehicles, banners, show cards, billboards, sandblasting, trade booth logos, name plates, and car plates.

Taxpayer was not registered as a retail merchant for the years covered by the audit. Taxpayer stated that when he first opened the business in 1989, he contacted the Department and was told he did not need to register and collect sales tax. It was his understanding that he should pay sales tax on all materials he purchased. Taxpayer does not remember who gave him this information; neither does Taxpayer have anything in writing from the Department to support his statements.

A review of sales invoices revealed sales of tangible personal property on which no sales tax was charged or collected by Taxpayer. An adjustment was made to assess sales tax on all tangible personal property sold. Items taxed included aluminum signs, illuminated signs, single-faced and double-faced wooden signs, coroplast signs, sandwich signs, magnetic signs, banners, and other miscellaneous items.

Taxpayer also had service receipts which were not taxed in the audit, as in accord with Indiana statutes.

Sales tax due was assessed on all taxable retail transactions. Credit was given to Taxpayer on the purchase invoices on which Taxpayer paid sales tax when he purchased the items, but which were resold to his customers.

Taxpayer filed a protest and a hearing was held.

I. Sales Tax—Requirement to withhold and submit sales tax

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana and a retail merchant is required to collect the tax as agent for the state. IC 6-2.5-4-1 defines a retail transaction as the acquisition of tangible personal property for resale to a customer for consideration. When tangible personal property is transferred to a customer, sales tax is to be calculated and collected.

Taxpayer stated in his protest letter that he operates a small sign painting and manufacturing company that began in 1989. Taxpayer stated that the business began with most of the work being the labor-intensive painting of custom signs and billboards. Taxpayer further stated that when he opened the business, he phoned the Department of Revenue for instructions on collecting sales tax. He explained that his work consisted of painting signs and billboards and that his prior experience had been that sales tax is paid when the sign company he had worked for purchased supplies. Taxpayer recalls being told that this is correct, except when the supplies purchased are significant items of the sign, then materials and labor should be stated separately and sales tax remitted on the materials, less any tax paid on the original purchase. Unfortunately, no documentation exists of this interaction with the Department. Taxpayer paid sales tax on his material purchases and thought he was not meeting the criteria for collecting sales tax.

At the hearing, Taxpayer explained that the business has expanded over the years and that he continued to rely on the information he had received from the Department in 1989. It needs to be noted, that based on what Taxpayer informed the Department his business activities would be, the information provided was sound. However, Taxpayer's business has expanded and at the time of the audit significant retail transactions were occurring upon which sales tax should have been calculated and collected from customers. Taxpayer's business evolved from painting signs into selling signs and sign materials. The Taxpayer's representative conceded at the hearing that Taxpayer's business had expanded and that Taxpayer had been relying upon information obtained from the Department years earlier. Taxpayer sold signs and sign materials at retail and sales tax needed to have been calculated and collected from the customers.

FINDING

For the reasons stated above, Taxpayer's protest is denied.